

Hoover Sues to Retain Records Of Those Cleared After Arrest

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WASHINGTON, Nov. 25 — J. Edgar Hoover, director of the Federal Bureau of Investigation, brought a court action today to maintain the F.B.I.'s authority to keep and circulate arrest records of persons who were not convicted following their arrests.

Mr. Hoover's action was a surprise move in a case in General Sessions Court in Washington that has developed into a test of the authority of courts to make the F.B.I. destroy arrest records that have been sent to them by local police departments.

The United States Attorney's office here, acting in Mr. Hoover's name, filed a petition in Federal District Court to remove the test case from the jurisdiction of Judge Harry T.

Alexander of General Sessions Court, who had issued what is believed to be the first court order limiting the F.B.I.'s use of its arrest files.

The arrest record at issue concerns Roland Penney, a 20-year-old part-time motel employe, who was arrested Oct. 31 and charged with assaulting a policeman. When the case came before Judge Alexander for a preliminary hearing on Nov. 10, the prosecutor conceded that the arrest was a mistake and dropped the charges.

Mr. Penney's lawyer, from the Public Defender's office, asked Judge Alexander to expunge the arrest record so that Mr. Penney would not be prejudiced in his efforts to get a

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job. The judge ordered the District of Columbia Police Department to destroy the arrest record, fingerprints and mug shots.

When it was pointed out that copies had already been forwarded to the F.B.I., Judge Alexander ordered the F.B.I. not to communicate the arrest information to anyone until he could hold a further hearing and decide whether to make the F.B.I. destroy the records.

The success of Mr. Hoover's efforts to transfer the case could have an important impact upon the effectiveness of a new type of statute that has recently been adopted by several states to protect persons from undeserved arrest records. New York is among the states that have adopted the law, which gives judges the power to make the local police departments destroy such records.

However, local police forces often routinely send copies of such arrest records and fingerprints to the Federal Bureau of

Investigation. Earlier this year, Attorney General John N. Mitchell issued an order reaffirming the F.B.I.'s authority to exchange such information with other agencies, including banking institutions and insurance companies.

The removal procedure employed today by Mr. Hoover is one that is frequently used by Federal officials who have been sued in state courts and who want the case transferred to the more congenial Federal courts. The same procedure might be used if state judges attempt to use their new laws to force the F.B.I., as well as local police forces, to erase certain arrest records.

Judge Alexander had set a hearing for Monday to decide whether the F.B.I. would be required to destroy Mr. Penney's arrest record. After today's action by Mr. Hoover, the case is now pending before Federal District Judge Gerhard A. Gesell, who will apparently decide whether Judge Alexander may proceed with the case.